appeared incorrectly, the same parties admitted during the course of the state proceedings that Verizon provides accurate listings more than 99 percent of the time, and that whatever errors did occur were minor and may not have any commercial impact on end-user customers. See Lacouture/Ruesterholz Decl. ¶ 400 (citing CTSI Final Comments at 8; App. B, Tab D). Moreover, as the PUC pointed out, "KPMG Consulting found that Verizon PA correctly provisioned over 98% test orders," there is "no direct evidence from end-user customers demonstrating a problem" regarding "ongoing problems with directory listing accuracy," and "the competitors concede that they themselves do not assess the underlying accuracies of the listing that they submit to Verizon," which means that many of the errors in listings are the fault of the CLECs themselves. PUC Consultative Report at 208.

As a result of all this, XO and CTSI are left to argue only that the steps taken by Verizon to address whatever small number of errors do exist "are little more than offers to work towards possible future solutions, without any firm commitment as to a date when they will be implemented." Broadslate at 18-19. But that is simply not true. For example, as even XO and CTSI acknowledge Verizon "ha[s] taken steps to minimize the manual retyping of directory listing orders," id. at 18, and has established a Quality Assurance Team, which is currently reviewing every directory listing service order prepared in the National Market Center, see Lacouture/Ruesterholz Reply Decl. ¶ 149. And Verizon already provides several alternative means for CLECs to verify the accuracy of their own listings and has established a single point of contact for receiving Listing Verification Report corrections from CLECs. See id. ¶¶ 145-146, 149. In sum, the PUC found these measures "to be an adequate resolution for the time being." PUC Consultative Report at 208.

4. Reciprocal Compensation.

The Pennsylvania PUC has found that Verizon "has reciprocal compensation arrangements in place and is making timely reciprocal compensation payments." Id. at 233; see Massachusetts Order ¶ 214; Kansas/Oklahoma Order ¶ 249. A few CLECs nonetheless raise billing disputes related to reciprocal compensation for Internet-bound traffic. See Capsule at 24-27; Broadslate at 26-28.[29] As the Commission has repeatedly found, however, whether a BOC pays reciprocal compensation for Internet-bound traffic "is not relevant to compliance with checklist item 13," and such claims thus have no place in a review of a section 271 application. Connecticut Order ¶ 67; accord Massachusetts Order ¶ 215; see PUC Consultative Report at 233 n.605 (following this precedent); see also Lacouture/Ruesterholz Reply Decl. ¶¶ 162-166.

5. Resale.

Verizon demonstrated in its Application that its resale performance is excellent. See Application at 52-56. The same was true across the board in May and June 2001. See Lacouture/Ruesterholz Reply Decl. ¶¶ 167-172.

Not surprisingly, the commenters here do not take issue with Verizon's resale performance. Instead, they focus solely on the sufficiency of Verizon's current plan to make

[29] Sprint, in contrast, complains that it should be able to pay reciprocal compensation, rather than switched access charges, on certain so-called "00-minus" calls – whereby a Verizon customer who subscribes to Sprint long distance dials "00" to reach Sprint's operator services platform, and the operator connects the call. See Sprint at 15-18. This dispute is currently before the Pennsylvania PUC in an arbitration proceeding, which is the appropriate forum for resolution of Sprint's claim. See New York Order ¶ 76; see also Texas Order ¶ 383 ("[S]ection 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions."). Sprint, however, admits that it is *not* the originating carrier in this arrangement, as is required under the Commission's rules for such calls to fall within the Commission's reciprocal compensation regulations. See 47 C.F.R. §§ 51.701(e), 51.703(a); see also PUC Consultative Report at 233.

DSL services available for resale where a reseller provides voice service on the line.[30] As demonstrated below, Verizon currently fully complies with the Commission's requirements, which were first adopted on July 20, 2001. See Connecticut Order ¶ 41. The Commission has recognized in analogous contexts that carriers must be permitted to implement newly adopted requirements in a reasonable manner. See Line Splitting Order[31] ¶ 21. And the Commission has further recognized that the fact that a carrier is working with the industry to do so is not a barrier to receiving long distance relief. See Massachusetts Order ¶¶ 177, 180-181.[32]

Verizon complied with the Commission's newly adopted requirement in Connecticut by offering resold DSL over resold voice lines in Connecticut, where Verizon serves only 60,000 access lines, through an interim manual process. See Connecticut Order ¶ 41. The Commission found that this offering in Connecticut was "sufficient to satisfy existing resale requirements for DSL and [to] bring Verizon into present compliance with the requirements of checklist item 14."

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[30] As Verizon has previously explained at length, it does not agree that the Act requires it to allow a CLEC "to resell DSL service over lines on which the [CLEC] resells Verizon's voice service." Connecticut Order ¶ 28. In the interest of brevity, Verizon will not repeat those same points here, as they are included elsewhere in the record.

[31] Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 16 FCC Rcd 2101 (2001) ("Line Splitting Order").

[32] An ILEC is not required to resell "bundled offerings that include deregulated CPE and internet access." Connecticut Order ¶ 42 n.93. Nor, contrary to claims by AT&T (at 33 n.33) and CompTel (at 25), is an ILEC required to resell its DSL service when a CLEC serves a voice customer using the UNE loop or UNE-P. See Connecticut Order ¶ 33; see also Texas Order ¶ 330; Line Splitting Order ¶ 26. When a CLEC obtains a UNE loop or the UNE-P from Verizon, it obtains "exclusive use of that facility." Local Competition Order ¶ 268; see also Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, ¶ 160 (1997). For an ILEC to resell DSL on such a line, it would have to obtain exclusive control over the high frequency portion of the loop, leaving the CLEC holding only the low-frequency portion of the loop, which the Commission has made clear is not a UNE. See, e.g., Texas Order ¶ 330.

Id. ¶ 39.[33] As of August 1, Verizon had not yet received any orders for this new service. See Lacouture/Ruesterholz Reply Decl. ¶ 173.

In Pennsylvania, however, Verizon serves more than 100 times as many lines as in Connecticut, making it possible that demand will be considerably higher. As a result, Verizon has outlined an implementation plan for offering resold DSL over resold voice lines in Pennsylvania, which allows CLECs to participate in the trial and rollout of this product. See Ex Parte Letter from Dee May, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, Att. at 2-4, CC Docket No. 01-138 (July 9, 2001) ("July 9, 2001 Ex Parte"). Verizon has also requested a waiver of the Bell Atlantic/GTE Merger Conditions, which it needs to proceed with this plan.[34] Pursuant to the implementation plan, Verizon and VADI have initiated discussions with two resellers regarding their participation in a cooperative production trial. See Lacouture/Ruesterholz Reply Decl. ¶ 175. That trial is slated to take place starting August 24, 2001. See July 9, 2001 Ex Parte Att. at 3.

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[33] In reaching that conclusion, the Commission rejected various CLEC complaints, repeated here, see ASCENT at 10, 12 n.25; AT&T at 33 n.33, about the terms on which Verizon offered this new service. See Connecticut Order ¶ 39 ("we cannot accept the contentions by certain commenting parties that this amounts to no more than a promise of future compliance"); id. ¶ 41 ("We are not persuaded that the interim manual ordering process for Verizon's expanded DSL resale offering constitutes an unreasonable restriction on resale . . . ."); id. ¶ 42 (requirements that the reseller must already be the voice provider on the line, that Verizon's performance will not be captured in the performance measurements, and that the offering is limited to copper loops "are acceptable on an interim basis, but which we expect Verizon to revise as it develops permanent order processing procedures"); id. ¶ 43 ("we do not believe that the mere possibility that Verizon will seek an increase in the[] non-recurring charges creates a sufficient level of uncertainty to warrant a finding of checklist noncompliance"); see also id. ¶¶ 34-38 (rejecting procedural challenges to consideration of Verizon's DSL over Resold Lines offering).

[34] See Ex Parte Letter from Dee May, Verizon, to Dorothy Attwood, Chief, Common Carrier Bureau, FCC, CC Docket No. 98-184 (July 10, 2001).

Assuming the production trial is successful, VADI will begin accepting commercial production orders for Verizon DSL over Resold Lines in Pennsylvania by September 7, 2001. See id. To ensure proper processing and provisioning of orders, Verizon will initially limit order volumes for Local Service Requests ("LSRs") that require manual handling. See id. This cap will increase up to 200 LSRs per day until systems and software enhancements to automate the process can be developed and implemented. While this is a new service, for which demand is unknown, these caps are reasonable. For example, this volume would have Verizon and VADI handling more LSRs for Resold DSL over Resold Lines in one day than the current number of line shared lines that CLECs order in Pennsylvania in an entire month. Moreover, this number is more than 50 percent of the approximately 380 LSRs for *all* resold POTS (which include feature changes as well as newly resold lines) that Verizon handles every day in Pennsylvania. See id.[35]

6. Operations Support Systems.

Based on a "comprehensive review," the Pennsylvania PUC concluded that Verizon's OSS in Pennsylvania are "deployed and ready," and that Verizon "has demonstrated compliance on this sub-issue of Checklist Item No. 2." PUC Consultative Report at 3, 104. As Verizon demonstrated in its Application, its systems are indeed handling large and increasing volumes of transactions in Pennsylvania. For example, in the first half of this year, Verizon's pre-ordering systems processed more than 2.4 million transactions, its ordering systems processed than nearly one million transactions, its maintenance and repair systems processed over 75,000 maintenance

[35] AT&T, however, takes issue with Verizon's implementation plan, suggesting that Verizon's proposed limit on the number of orders per day violates the checklist. See AT&T at 33 n.33. AT&T is wrong. As noted above, the volume caps are reasonable. Verizon cannot be expected to develop instantly a fully operational, automated process to respond to a newly established legal obligation. In these circumstances, the implementation plan Verizon has proposed is an eminently reasonable approach. Cf. Connecticut Order ¶ 41 ("we believe that the approach Verizon is taking in the interim in Connecticut is reasonable").

transactions, and its billing systems created half a billion call records. See McLean/Wierzbicki/Webster Reply Decl. ¶ 58.

Moreover, "[a] test of Verizon's OSS was conducted by a third-party evaluator" – KPMG – "acting under the direct supervision" of the PUC for a period of 18 months. PUC Consultative Report at 2-3. The test "covered nearly 600 individual test points across five test domains (pre-ordering, ordering and provisioning; maintenance and repair; billing; relationship management and infrastructure; and performance metrics) required by section 271." Id. at 3. In addition, KPMG performed a review of Verizon's "actual market performance" in January, February, and March 2001, during which Verizon "demonstrated fairly continuous improvement in its ability to perform up to the expected standards." Id. at 104. And the PUC concluded that "[t]he 18-month KPMG Consulting third-party test and the subsequent 90-day commercial availability review, taken together, demonstrate that Verizon PA's OSS provides the 14 Checklist items required by section 271(c)(2)(B)." Id. at 3.

Several parties take issue with a few aspects of Verizon's OSS, but as demonstrated below their claims provide no basis for overruling the PUC's carefully reached determination.

Pre-Ordering. In Pennsylvania, in the first half of 2001, Verizon's OSS processed more than 2.4 million pre-order transactions. See McLean/Wierzbicki/Webster Reply Decl. ¶ 58. The Pennsylvania PUC found that "the commercial operations data supports that Verizon PA's OSS interfaces are sufficiently available and have adequate response times." PUC Consultative Report at 81. In addition, "KPMG's independent third-party test revealed that Verizon PA's interface systems were sufficiently available, responded in a timely manner to pre-order queries

and orders, and could meet increasing demand volumes." PUC Consultative Report at 83.[36] No CLEC seriously disputes these conclusions.[37]

Flow Through. The PUC concluded that Verizon's "flow-through rates in Pennsylvania are sufficient under the FCC's criteria established in the Massachusetts Section 271 proceeding." PUC Consultative Report at 87. The PUC further noted that, "[a]s in Massachusetts, Verizon PA has shown in Pennsylvania that it is capable of flowing-through CLEC orders in substantially the same time and manner as with retail orders," and that "KPMG's independent third-party test also reveals that Verizon PA's systems are capable of flowing-through a high percentage of CLEC orders." Id.

AT&T claims (at 46-47) that the "total monthly flow-through rate" in Pennsylvania is below the levels approved in New York. However, the flow-through rates for each category of the most significant types of orders – UNE platforms, UNE loops, and resale – are comparable to, or better than, the levels in New York and Massachusetts at the time of Verizon's application in those states. See McLean/Wierzbicki/Webster Decl. ¶ 74; McLean/Wierzbicki/Webster Reply Decl. ¶¶ 66-67; Massachusetts Order ¶ 78; Connecticut Order ¶ 55 & n.132. Moreover, Verizon's flow-through rates have consistently improved in recent months. See

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[36] Only AT&T attempts to cast doubt on the KPMG test, claiming (at 45-46) that it performed only limited testing on Verizon's new LSOG 4 interfaces. But that is utterly irrelevant here, in the first six months of this year, CLECs used the LSOG 4 interface for over 1.9 million pre-order transactions (over three-quarters of pre-order transactions) and over 630,000 ordering transactions (nearly two-thirds of order transactions). And no CLEC that uses LSOG 4 has claimed in its comments here that it is experiencing any problems with that interface. See McLean/Wierzbicki/Webster Reply Decl. ¶¶ 58-60.

[37] One group of commenters claims Verizon's systems are unavailable more often than Verizon reports and experience slowdowns that are not captured in Verizon's measurements. See Capsule at 12-13. As an initial matter, these parties rely on claims by WorldCom in the state proceedings that WorldCom does not repeat here. And for good reason. As Verizon previously demonstrated, they are not true. See McLean/Wierzbicki/Webster Reply Decl. ¶ 65; McLean/Wierzbicki/Webster Decl. ¶ 39.

Guerard/Canny/DeVito Reply Decl. Att. 1. Indeed, over 80 percent of UNE platform orders flowed through in June 2001. See McLean/Wierzbicki/Webster Reply Decl. Att. 11. As the Commission has held, such an "improving trend" of performance provides persuasive evidence that Verizon is complying with its checklist obligations. See, e.g., Massachusetts Order ¶¶ 140, 146; Kansas/Oklahoma Order ¶¶ 187, 192; Connecticut Order App. D, ¶ 8.[38]

In any event, the Commission has held that that "flow-through has significantly less value as an indicator of deficiencies of [Verizon's] OSS" compared to Verizon's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems." New York Order ¶ 163; see also Massachusetts Order ¶ 77 (flow-through rates are "not so much an end in themselves" or a "'conclusive measure of nondiscriminatory access to ordering functions'") (quoting New York Order ¶ 161). Verizon's performance is strong with respect to each of these areas.

First, the PUC found that "[t]he record demonstrates that Verizon PA is providing FOCs and rejects in a manner that allows CLECs a meaningful opportunity to compete." PUC Consultative Report at 89. Indeed, in the first six months of 2001 alone, Verizon processed nearly 1 million ordering transactions. See McLean/Wierzbicki/Webster Reply Decl. ¶ 58. Verizon's on-time performance for returning confirmation and reject notifiers from February through April generally exceeded the 95 percent benchmark across almost all order types for both UNE and resale orders, and the same continued to be true in May and June. See Application at 60; McLean/Wierzbicki/Webster Reply Decl. ¶ 67.

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[38] WorldCom claims (at 28) that Verizon never performed a root-cause analysis of its flow-through problems, so there is no way to determine whether the recent improvements to Verizon's systems have been effective. But as noted above, Verizon's flow-through rates have been steadily increasing in recent months, as the PUC has confirmed. See PUC Consultative Report at 87 & n.202.

Second, Verizon demonstrated that it is accurately processing manually handled orders. For example, from February through April 2001, Verizon exceeded the 95 percent standard for correctly inputting the information for almost every field. See McLean/Wierzbicki/Webster Decl. ¶ 87; see also Massachusetts Order ¶ 81 & n.251 (finding comparable results acceptable).[39] And in May and June, Verizon's accuracy rates improved further still. See Guerard/Canny/DeVito Reply Decl. Att. 1.

Third, Verizon's systems are clearly scalable. For example, in just the first four months of this year, Verizon's pre-ordering systems processed more pre-ordering transactions than in all of 2000 and more than three times the number of ordering transactions than in the same period last year. Moreover, KPMG has tested Verizon's ability to process normal, peak, and stress order volumes and found that it satisfies all test criteria. See KPMG Final Report at 282 (TVV-2-1-1). KPMG's test therefore confirms that Verizon "could meet increasing demand volumes." PUC Consultative Report at 83.

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[39] As Verizon explained, the one exception was that Verizon's reported results for UNE Order Accuracy in February was 84.7 percent; however, once this measurement is corrected to remove errors made in service order fields that have no effect on the outcome of the service order or the committed due date, the results for February rise to almost 93 percent. See Application at 61 n.68. AT&T claims that, for orders that did not flow through Verizon's systems, its "reported rates of accuracy . . . have consistently fallen short of the PaPUC's benchmark." AT&T at 48; see also WorldCom at 27-28. But as AT&T's own support for this statement shows, Verizon's accuracy rate from March through May was slightly below the 95 percent benchmark. See AT&T's Fawzi/Kirchberger Decl. ¶ 42 n.32 (citing OR-6-01). The Commission has held that service order accuracy measures understate Verizon's performance because they attribute as errors all differences between the original order submitted by a CLEC and the information that is entered into the service order processor – including instances where Verizon *corrects* a CLEC's error. See McLean/Wierzbicki/Webster Decl. ¶ 88; New York Order ¶¶ 173-174. Once these factors are taken into account, Verizon's "actual level of service order accuracy is significantly higher than reflected in its performance data" for these measurements. New York Order ¶ 174 & n.548.

Faced with all this, AT&T and Covad are left to argue that their own individual flow-through rates are lower than the flow-through rate for CLECs overall. See AT&T at 47; Covad at 20. But as the Commission has found, the fact that some carriers have higher (or lower) flow-through rates than others – as is the case here – "strongly implies that the competitors, rather than [Verizon], are largely responsible for any 'poor' UNE flow-through performance." New York Order ¶ 166. As AT&T itself concedes (at 47), its low flow-through rates are due to the fact its own customers "can, and do, change their minds" after an initial order has been submitted, which results in a large number of "supplemental orders" that, by design, do not flow through Verizon's systems so as to ensure that these complicated orders are handled properly. See Connecticut Order ¶¶ 55-56.[40]

Finally, AT&T claims (at 48) that Verizon has no incentive to improve its flow-through performance, because unlike in New York and Massachusetts, Verizon faces no financial penalties for poor flow-through performance under the Pennsylvania Performance Assurance Plan. As an initial matter, this claim is belied by the fact that flow through has considerably improved over the last eight months. Indeed, Verizon has a strong incentive to improve flow through for the simple reason that orders that flow through are simpler and less costly to process. In any event, the fact is that aspects of Verizon's performance related to flow through – such as providing timely confirmation and completion notices, and provisioning orders on time – *are*

[40] AT&T claims that Verizon has not adequately explained why it does not flow through supplemental orders. See AT&T at 47. Yet, as Verizon explained in its Application, these supplemental orders, which change or cancel an order that has reached Verizon's Service Order Processor, are routed to Verizon's National Market Center for manual handling in order to ensure that the CLEC's revised order – rather than the active service order, which is first in the queue – is implemented. See McLean/Wierzbicki/Webster Reply Decl. ¶ 69; McLean/Wierzbicki/Webster Decl. ¶ 78. The same is true in New York, Massachusetts, and Connecticut.

captured in the performance measurements and are also included in the Pennsylvania Performance Assurance Plan. See infra Part II.B.2.[41] Those penalties give Verizon a clear incentive to increase the flow-through capabilities of its OSS, because improving flow through will improve its OSS and provisioning performance. See McLean/Wierzbicki/Webster Reply Decl. ¶ 68.[42]

Order Status Notifiers. The PUC has found that Verizon's performance in providing all types of order status notifiers to CLECs satisfies the checklist. As noted above, it found that "Verizon PA is providing FOCs and rejects in a manner that allows CLECs a meaningful opportunity to compete." PUC Consultative Report at 89. Likewise, it concluded that "Verizon PA is providing timely" provisioning completion notices. In particular, it concluded that any

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[41] Although the Commission "has consistently stated that a BOC is not accountable for orders that fail to flow through due to competing carrier-caused errors," Massachusetts Order ¶ 78, imposing financial penalties on a BOC based on CLECs' flow-through rates does just that. As the Commission has recognized, flow-through rates measure not only the capabilities of Verizon's OSS, but also CLECs' ability to submit orders properly. See Kansas/Oklahoma Order ¶ 146; Massachusetts Order ¶ 78. In Pennsylvania, for example, in March 2001, the five CLECs with the best UNE-P flow-through rates had 74 percent of their orders flow through, while the five CLECs with the worst flow-through rates had only 29 percent of their UNE-P orders flow through. See McLean/Wierzbicki/Webster Decl. ¶ 77 & Att. 18. Although Verizon has taken substantial steps to help CLECs increase their flow-through rates, see id. ¶¶ 80-81, it would be unfair to require Verizon to pay penalties attributable to CLEC errors, and it would also give CLECs an incentive to submit orders that do not flow through in order to receive such payments.

[42] In addition, the Pennsylvania PUC has stated that if Verizon's flow through "is not adequate to support commercial volume levels," it would "take the necessary steps to address that problem," and that establishment of flow through as a diagnostic measurement would "provide [it] with the necessary data to monitor this issue." Joint Petition of Nextlink Pennsylvania, Inc., et al., for an Order Establishing a Formal Investigation of Performance Standards, Remedies, and Operations Support Systems Testing for Bell Atlantic-Pennsylvania, Inc., Opinion and Order at 64, Docket No. P-00991643 (Pa. Pub. Util. Comm'n entered Dec. 31, 1999) ("Dec. 31, 1999 Order") (App. B, Tab R-8). The possibility of remedy payments in the future provides further incentive for Verizon continually to improve its flow-through performance. In addition, the performance assurance plans Verizon has proposed in Pennsylvania include flow-through measures. See Guerard/Canny/DeVito Reply Decl. Att. 5.

issues with respect to Verizon's timeliness in providing billing completion notifiers have been "corrected" "through the implementation of a systems fix," and its performance is now "strong and steadily improving reaching 94% during the commercial availability period." Id. at 93-94. The PUC also stated that it is "confident that the previously-discussed systems fixes along with [the] addition of a BCN timeliness metric with remedies will provide the necessary means and incentives for Verizon PA to continue to provide timely BCNs on an ongoing basis." Id. at 94.[43] Moreover, KPMG found that the confirmation and completion notifiers provided by Verizon were complete and accurate and in accordance with the applicable rules. See McLean/Wierzbicki/Webster Decl. ¶ 90; KPMG Final Report at 235-37, 242-44.[44]

AT&T nevertheless claims that Verizon fails to provide billing completion notifiers on time. See AT&T at 48-50; see also CompTel at 19. Unable to challenge Verizon's performance to CLECs overall, AT&T once again attempts to rely on the billing completion notifiers that it alone has received. AT&T's principal claim is that, in March 2001, some 25 percent of its billing completion notifiers were supposedly late when measured using a four-business-day interval. See AT&T's Fawzi/Kirchberger Decl. ¶ 46.[45] But, even for AT&T, this single month

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[43] AT&T complains (at 50 & n.57) that the timeliness standard under consideration in Pennsylvania is more lenient than the New York standard. AT&T misstates the facts. As Verizon explained in its Application, the standard billing cycle in Pennsylvania is one day longer than in New York, so the corresponding measurement should track that difference. See Application at 63 n.69; McLean/Wierzbicki/Webster Decl. ¶¶ 103-104; McLean/Wierzbicki/Webster Reply Decl. ¶ 74.

[44] A few commenters complain about the accuracy of the status notices they received from Verizon in January 2001. See Capsule at 15. But Verizon has not relied on that performance here, and these CLECs do not dispute that Verizon's performance from February through June has been strong. See McLean/Wierzbicki/Webster Decl. ¶ 87; Guerard/Canny/DeVito Decl. Att. 1.

[45] AT&T's other examples (as well as CompTel's) measure Verizon's performance under a three-day interval. See AT&T's Fawzi/Kirchberger Decl. ¶ 46; CompTel at 19. As explained above, a four-day interval is appropriate in Pennsylvania. See supra note 43. In addition, CompTel claims (at 19) that MetTel has not received provisioning completion notifiers or

is not representative of Verizon's performance, which was significantly better in February and April, and which continued to improve further still in May and June. See McLean/Wierzbicki/Webster Reply Decl. ¶ 64; McLean/Wierzbicki/Webster Decl. ¶ 106. Moreover, as the PUC found, Verizon's performance overall "has been strong and steadily improving," which is more relevant than the experience of just a single CLEC. PUC Consultative Report at 94.[46]

C. Pricing of Network Elements.

The Pennsylvania PUC has affirmed unequivocally that it "has established TELRIC-compliant rates" for all unbundled network elements that Verizon is required to provide. PUC Consultative Report at 61; see also id. at 53. Under the Commission's well-settled precedent, this should be the end of the inquiry. The Commission "will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if 'basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.'" Kansas/Oklahoma Order ¶ 59 (quoting New York Order ¶ 244).

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responses to status inquiries on trouble tickets on time. From November 2000 through May 2001, however, MetTel opened trouble tickets for missing status notifiers on less than three percent of the purchase order numbers it submitted during that time period. See McLean/Wierzbicki/Webster Reply Decl. ¶ 66. Moreover, MetTel claims that its notifiers are late, and therefore opens trouble tickets, based on date and time stamps that do not match those in Verizon's records and based on order status logic that is inconsistent with the design and operation of Verizon's OSS. See id.

[46] Covad claims (at 19 & Att. H) that Verizon is not providing jeopardy notices via the EDI interface. But the PUC found that "Verizon PA provides access to jeopardy information in a non-discriminatory manner," and that "[t]he record demonstrates that Verizon PA has been providing jeopardy information in a manner that allows CLECs a meaningful opportunity to compete." PUC Consultative Report at 94-95. Verizon is not aware of any trouble tickets in Pennsylvania that Covad has submitted on this issue. See McLean/Wierzbicki/Webster Reply Decl. ¶ 72.

In any event, the evidence here clearly demonstrates that the rates in Pennsylvania are well within the range that a reasonable application of TELRIC would produce. AT&T and WorldCom are the only parties that challenge Verizon's rates, but their comments present no evidence that comes even close to rebutting the strong presumption that Verizon's rates comply with TELRIC. Indeed, it is astounding that either of these two carriers is now complaining at all about the rates in Pennsylvania, given that the PUC largely adopted the rates they proposed and that, in other proceedings, they have held out the Pennsylvania rates as the standard to which Verizon should be held. In Massachusetts, for example, WorldCom argued that Verizon should be required to "[a]gree to the Pennsylvania rates, the state in the region that has most recently analyzed UNE rates, rates that we know lead to competitive entry, because they have statewide in Pennsylvania."[47] AT&T likewise argued repeatedly in Massachusetts that Verizon's rates should be closer to those in "other States in its own region such as Pennsylvania."[48]

AT&T's and WorldCom's challenges here are all the more ironic because the Pennsylvania rates not only satisfy the standards set forth in the Act and the Commission's rules, but also the tests that AT&T and WorldCom have argued the Commission should apply in lieu of such standards. For example, AT&T and WorldCom argued throughout the Massachusetts

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[47] Transcript at 5606, Technical Session Before the Massachusetts DTE, Docket DTE 99-271 (Mass. DTE Sept. 8, 2000) (testimony of Robert Lopardo, WorldCom), App. B, Tab 565, to Application by Verizon New England for Authorization To Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 00-176 (FCC filed Sept. 22, 2000).

[48] AT&T Massachusetts 271 Supplemental Reply Comments at 12-13, CC Docket No. 01-9 (FCC filed Feb. 28, 2001); see also id. at 9 ("'There is no more reason to assume that New York switching costs are a meaningful proxy for Massachusetts switching costs than are Pennsylvania switching costs, which are substantially lower than New York switching costs.'") (quoting ASCENT Supplemental Comments at 9, CC Docket No. 01-9 (FCC filed Feb. 6, 2001)); id. ("Similarly, Verizon does not answer WorldCom's critical point that it is implausible that Verizon's rates in Massachusetts – some of which are double the rates in Pennsylvania and numerous other states cited by WorldCom – reflect the fact that Verizon's costs are twice as high in Massachusetts.").

proceeding that the Commission should effectively ignore whether the rates comply with TELRIC and consider instead whether they provide a gross profit margin that the long distance incumbents deem adequate.[49] While the Commission correctly rejected that claim as flatly contrary to the Act, their arguments in support of it highlight the utterly baseless nature of their claims here. For example, WorldCom demonstrated to the Commission that it was able to earn a profit in each of the four density zones in Pennsylvania, and that in density zones 1 and 2 it was able to earn a larger profit than in any place else in the country it has entered.[50] This is precisely why WorldCom has stated that the rates in Pennsylvania are at levels that "permit competitive entry," create a local market that is "open to competition," and enable them to "offer a quality product at a reasonable price."[51] AT&T's and WorldCom's claims to the contrary here are simply devoid of credibility.

Because they are left without their usual (and now rejected) arguments, AT&T and WorldCom resort to challenging the process by which the Pennsylvania PUC established rates.

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[49] See, e.g., AT&T Massachusetts 271 Supplemental Comments at 27, CC Docket No. 01-9 (FCC filed Feb. 6, 2001) ("Regardless of whether Verizon's new rates are found to comply with TELRIC, Verizon has introduced no evidence to counter the CLECs' margin analysis that shows – beyond any reasonable doubt – that UNE-P entry is not profitable in Massachusetts under the current rates."); AT&T Massachusetts 271 Reply Comments at 2, CC Docket No. 00-176 (FCC filed Nov. 2, 2000) (rates "manifestly do not provide sufficient margin for any firm profitably to provide broad-based local service . . . using UNE-P"); WorldCom Massachusetts 271 Supplemental Comments at 35-36, CC Docket No. 01-9 (FCC filed Feb. 6, 2001) ("companies provide service only when they believe they can do so profitably"); see also Massachusetts Order ¶¶ 41-42 (rejecting this test).

[50] See Ex Parte Letter from Keith Seat, WorldCom, to Magalie Roman Salas, FCC, Att. at 14, CC Docket No. 01-9 (Jan. 31, 2001) (chart entitled "Gross Margin by Zone in Massachusetts and Five States WorldCom has Entered").

[51] Final Brief of MCI WorldCom Communications, Inc. at 6, Consultative Report on Application of Verizon Pennsylvania, Inc., for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Docket No. M-0000-1435 (Pa. PUC filed Apr. 18, 2001) ("WorldCom Final Brief"); WorldCom, MCI Local Service: Frequently Asked Questions, at www.mciworld.com/for_your_home/products_services/local/faq.shtml (visited July 30, 2001).

They claim that the rates were improperly established through a negotiated settlement, rather than through an application of TELRIC. See AT&T at 5, 10-11; WorldCom at 18-19. This is simply untrue. As the PUC explained, "[r]ates for UNEs were set by the PAPUC's Global Order," which "were set by using a TELRIC-type cost methodology from the PAPUC's prior UNE pricing proceeding, MFS – Phase III, and modifying the inputs." PUC Consultative Report at 50. In particular, "[t]he Global Order refined the pricing methodology of the MFS – Phase III Order to establish refined and lower TELRIC rates that better reflected the PAPUC's increasing expertise with TELRIC pricing, were more conducive to competition, and which better responded to the CLECs concerns." Id. at 53.

Moreover, AT&T has "taken out of context and misconstrued" the Global Order. Id. at 54. The PUC never "admitted" that Verizon's rates were not set in accordance with TELRIC. Instead, the PUC says that the single sentence on which AT&T relies merely reflects the PUC's conclusion (Verizon believes incorrectly) that certain inputs used in setting TELRIC-compliant rates in the MFS – Phase III Order should be further changed. Id.[52]

Just as it mischaracterizes the PUC's decision, AT&T (together with WorldCom) also mischaracterizes the holding of the federal district court in Pennsylvania that remanded the MFS

[52] AT&T claims that Verizon admitted, in a proceeding in New Jersey, that the rates the PUC set are not TELRIC-compliant. See AT&T at 12. AT&T again is taking a sentence out of context. After the Pennsylvania PUC reduced Verizon's UNE rates, the New Jersey Board of Public Utilities inquired whether Verizon's costs had changed. Verizon contended that its costs had not changed and that the rates the PUC set were *below* those that would result from a reasonable application of TELRIC. See Whelan/Sanford Reply Decl. ¶ 21. That Verizon contended the rates are too low in no way supports AT&T's claim that the rates are too high to be TELRIC-compliant or its claim that the rates violate the checklist. See id.; Kansas/Oklahoma Order ¶ 66.

– Phase III Final Order[53] to the PUC. See AT&T at 13; WorldCom at 19-20. That court did not, as AT&T and WorldCom claim, reject the rates set by the PUC as inconsistent with TELRIC. In fact, as the PUC explains, the court "did not actually analyze the cost methodology" at all. PUC Consultative Report at 54-55.[54] "Rather, the district court based its decision on the fact that the PAPUC[] characterized the methodology as TSLRIC instead of TELRIC. . . . This is more a matter of semantics than substance since the incremental pricing principles are the same for both – TSLRIC for 'services' and TELRIC for 'elements' of a service." PUC Consultative Report at 55.[55] Indeed, this Commission has described TELRIC as a form of TSLRIC for elements. See Local Competition Order ¶ 678.

Finally, despite criticizing the rates in Pennsylvania as the product of a negotiated settlement, rather than an application of TELRIC, AT&T and WorldCom turn around and complain about several of the inputs that the Pennsylvania PUC used in its application of TELRIC to establish Verizon's rates. But the long distance incumbents' claims are the very same ones that they already raised before the Pennsylvania PUC, and that the PUC has already

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[53] Application of MFS Intelenet of Pennsylvania, Inc., Final Opinion and Order, Docket Nos. A-3102303F0002, et al. (Pa. Pub. Util. Comm'n entered Aug. 7, 1997) (App. B, Tab O-12) ("MFS – Phase III Final Order").

[54] This puts the lie to WorldCom claims (at 21) that Verizon has not made a prima facie case that its rates comply with TELRIC, because the only record evidence supporting Verizon's rates is a cost study that WorldCom claims a federal district court has repudiated.

[55] See also Brief of Appellants at 29, MCI Telecomms. Corp. v. Verizon Pennsylvania Inc., No. 00-2257 (3d Cir. filed Dec. 20, 2000) (App. B, Tab O-21) ("The issue before the District Court was whether the method used by the PUC produced unlawful rates. The District Court should have, but did not, reach this issue. Instead, the District Court rejected the PUC's rates based solely on the PUC's use of the acronym 'TSLRIC.'"); MCI Telecomms. Corp. v. Bell Atlantic-Pennsylvania, Inc., No. 1:CV-97-1857, slip op. at 13 (M.D. Pa. June 30, 2000) (App. B, Tab O-17) ("in the absence of more than self-serving statements regarding TSLRIC's consistency with the FCC's pricing rules or possibility that TELRIC and TSLRIC do not differ in practice, the court is unpersuaded that the PUC's decision was appropriately based upon the TELRIC methodology"), appeal pending, No. 00-2258 (3d Cir. filed Aug. 8, 2000).

rejected. Moreover, these are the same arguments that are now under review in the Third Circuit.[56] Finally, although the Commission need not and should not reach the long distance incumbents' arguments about isolated inputs, there is extensive evidence here that the PUC rigorously adhered to TELRIC principles.

First, the PUC's methodology, which is "based upon the most efficient technology deployed in [Verizon's] current wire center locations," adhered to TELRIC principles, and, as the PUC concluded, "meets with the Act and the FCC's guidelines."[57] Indeed, as the PUC explains, the one court that did review the substance of the Pennsylvania rates found that, "in determining UNE incremental costs, based on existing wire centers *and the most efficient technology*, the PAPUC used a forward-looking long-run basis in determining the MFS – Phase III Order UNE rates and the Global Order rates." PUC Consultative Report at 55 (emphasis added).[58] Indeed, AT&T itself concedes (at 22-24, 27-28) that the PUC assumed the replacement of the existing network with least cost, most efficient technology in assuming that the forward-looking network would use fiber feeder and digital loop carrier to a much greater extent than the existing network. See Whelan/Sanford Reply Decl. ¶¶ 27-28.

Second, the Pennsylvania PUC followed TELRIC principles in assuming the use of fiber in the feeder portion of Verizon's loop plant. See AT&T at 20, 22-23. Both the Commission

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[56] See Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n, Nos. 00-2619 & 00-2620 (3d Cir. filed Sept. 11, 2000).

[57] Application of MFS Intelenet of Pennsylvania, Inc., Interim Opinion at 85, Docket Nos. A-3102303F0002, et al. (Pa. Pub. Util. Comm'n entered Apr. 10, 1997) (App. B, Tab O-8) ("MFS – Phase III Interim Opinion").

[58] See also Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Pub. Util. Comm'n, 763 A.2d 440, 483 (Pa. Commw. Ct. 2000) ("With the record confirming that the PUC has followed state and federal law in establishing UNE rates in accordance with the TELRIC methodology recognized by MCI, this Court, recognizing the PUC's administrative expertise, has no basis for specifying the use of a particular cost model for this UNE pricing application.").

and the D.C. Circuit have indeed found that the use of fiber feeder – even though it "can be more expensive than copper in longer loop lengths" – is entirely consistent with TELRIC.[59] In doing so, the Commission rejected the exact same argument that AT&T makes here – that Verizon "installed all-fiber feeder in order to subsidize its own broadband network for the provision of future services, and that competitors should not be required to subsidize such costs." New York Order ¶ 248; AT&T at 20 (assumption of fiber feeder "improperly shifts to CLECs and their narrowband customers the costs of broadband services"). As in New York, AT&T "has not presented sufficient evidence to prove that the [Pennsylvania] Commission erred in its determination or that it neglected to consider any relevant facts relating to fiber feeder," and its claims must therefore be rejected. New York Order ¶ 249; see Whelan/Sanford Reply Decl. ¶ 32.[60]

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[59] See, e.g., New York Order ¶ 248 ("[w]e also reject AT&T's allegation that Bell Atlantic's unbundled element prices are not TELRIC-based because Bell Atlantic uses fiber in the feeder portion of its loop plant") (footnote omitted); AT&T Corp. v. FCC, 220 F.3d 607, 619 (D.C. Cir. 2000) (AT&T's arguments "miss the mark. The question whether the FCC adequately considered AT&T's comments is 'subsumed within [appellants'] substantive challenge' to the FCC's conclusion that the assumption of fiber feeder was appropriate, and we find no basis for faulting the Commission's decisionmaking on that point.") (quoting Chemical Mfrs. Ass'n v. EPA, 28 F.3d 1259, 1263 (D.C. Cir. 1994)) (alteration in original). In any event, the assumption underlying AT&T's argument that the costs of a broadband-capable network are higher than those associated with using copper loops is incorrect, as the PUC found. See Whelan/Sanford Reply Decl. ¶ 31 (quoting MFS – Phase III Interim Opinion at 69).

[60] In the state proceedings, the PUC found that the inclusion of fiber feeder was appropriate because "the costs of building a broadband capable network are costs that [Verizon] actually expects to incur – and is in fact *legally required* to incur – in providing unbundled loops to its competitors." MFS – Phase III Interim Opinion at 67; see Whelan/Sanford Reply Decl. ¶ 30. In addition, the PUC found that "broadband capable loops are frequently less expensive than copper loops, due to the very high costs of copper," and the higher maintenance costs of copper. MFS – Phase III Interim Opinion at 67. This puts the lie to AT&T's claim – unsupported to begin with – that the record in the state proceedings established that the inclusion of fiber "significantly increased UNE loop rates." AT&T at 23 (emphasis omitted).

Third, the PUC adhered to TELRIC principles in determining the utilization rates of Verizon's loop plant. See AT&T at 26-27; WorldCom at 23. Again, this Commission's pricing rules leave to state commissions the task of determining "reasonably accurate 'fill factors' (estimates of the proportion of a facility that will be 'filled' with network usage)," Local Competition Order ¶ 682, and the PUC did precisely that. The PUC has adopted a fill factor of 85 percent, which it correctly notes "compare[s] favorably to the factors approved by the FCC" in Massachusetts, where the Commission accepted a "fill factor of 40% while noting that in other section 271 applications the FCC has adopted fill factors ranging from 50 to 75%." PUC Consultative Report at 54 n.154 (citing Massachusetts Order ¶ 39); see also Whelan/Sanford Reply Decl. ¶ 37.

Fourth, the PUC adhered to TELRIC principles in determining Verizon's unbundled switching rates in Pennsylvania. Once again, AT&T and WorldCom rehash their claim that the switching rates are flawed because they are based on a mix of vendor discounts for new switches and growth additions, rather than solely on the larger discounts typically available for new switches. See AT&T at 28-30; WorldCom at 23. But, faced with the same evidence that the long distance incumbents present here, the Commission and the D.C. Circuit squarely rejected this argument. For example, in upholding the switching rates in New York, the Commission explicitly rejected the argument "that TELRIC does not permit recovery of the cost of 'augmented switches,' which are existing switches with capacity upgrades," and that "Bell Atlantic's proposal to recover such costs here violates TELRIC." New York Order ¶ 243. The D.C. Circuit agreed, noting that it was "comfortable deferring to the Commission's conclusion that . . . the NYPSC has not made such 'clear errors in factual findings' that switching costs fall 'outside the range that the reasonable application of TELRIC principles would produce.'"

AT&T, 220 F.3d at 617-18 (quoting New York Order ¶ 244). The court noted that "FCC counsel explained that growth additions to existing switches cost more than new switches only because vendors offer substantial new switch discounts in order to make telephone companies dependent on the vendors' technology to update the switches." Id. at 618. Based on this, the court found that "the Commission reasonably concluded" that "inclusion of growth additions" "did not violate TELRIC." Id.

The PUC used identical reasoning in finding AT&T's and MCI's arguments "not . . . at all persuasive." MFS – Phase III Interim Opinion at 84. It found that, "consistent with currently available technology, [Verizon] can reasonably expect to purchase both new switching equipment and add on equipment in providing access to CLECs. [Verizon's] proposal provides a mix of vendor discounts based upon this projected equipment purchase." Id. at 84-85; see Whelan/Sanford Reply Decl. ¶¶ 34-35.[61]

Fifth, and finally, the PUC followed TELRIC principles in establishing Verizon's depreciation rates in Pennsylvania. See AT&T at 24-25; WorldCom at 24-25. This Commission's pricing rules assign the task of determining risk-adjusted depreciation rates to state commissions. See Local Competition Order ¶ 686. In most cases, the PUC prescribed depreciation rates at historical levels, see MFS – Phase III Interim Opinion at 35, which is

[61] Rehashing yet another claim that the PUC specifically rejected, WorldCom also claims (at 24) that the switching rates are inflated because they "do not include all the [vertical] features available in Verizon's switches." As the PUC found, however, this approach is fully consistent with the Local Competition Order, which "declined to require further unbundling of independent vertical feature elements" since "(a) such further unbundling '. . . does not appear to be necessary to promote local competition.'; (b) would not result in a practical difference in the way the local switching element is provisioned; and (c) the incremental costs associated with vertical switching features on a per-line basis 'may be quite small' and not justify the administrative difficulty for the ILEC or the arbitrator to determine a price for each vertical element." MFS – Phase III Interim Opinion at 88 (quoting Local Competition Order ¶ 413) (alteration in original).

exactly what the Commission has prescribed as the default rule, see Local Competition Order ¶¶ 686, 702. When the PUC deviated from historical depreciation lives, it selected ones that are comparable to, and often longer than, those adopted by other state commissions. See Whelan/Sanford Reply Decl. ¶¶ 40-41.[62] The PUC found this approach to be appropriate in light of the fact that this Commission's own statements "convey a degree of flexibility in using depreciation rates that are higher than regulators historically have permitted," and that "the FCC itself has recognized a need to examine its own depreciation rules in light of the Act." MFS – Phase III Interim Opinion at 35. With respect to WorldCom's criticism of the PUC's decision to adopt shorter depreciation lives based on a forward-looking broadband network, the PUC found "more merit in the analysis of future economic conditions than past prescribed lives," given Verizon's "expected position in a competitive market." Id. at 45; see Whelan/Sanford Reply Decl. ¶ 39.

II. APPROVING VERIZON'S APPLICATION IS IN THE PUBLIC INTEREST.

In its Application, Verizon demonstrated that local competition in Pennsylvania is thriving; that Verizon's local markets will remain open after Verizon obtains section 271 approval; and that permitting Verizon to provide interLATA service in Pennsylvania will vastly

[62] AT&T claims (at 25) that the depreciation lives for digital switches in Pennsylvania are significantly shorter than in any other state in Verizon's region, and have since been rejected by several other states, including Delaware. In fact, the depreciation life for digital switches adopted by the New York PSC is only one year longer than that adopted by the Pennsylvania PUC. See Whelan/Sanford Reply Decl. ¶ 41. The Commission has recognized that "the parameters of TELRIC may vary from state to state." Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 291 (1997) ("Michigan Order"); Kansas/Oklahoma Order ¶ 76. And, here, there can be no question that the PUC's methodology produces rates that are within a range that a reasonable application of TELRIC would produce. Indeed, there are many other assets for which the PUC has prescribed longer depreciation lives than the New York PSC. See Whelan/Sanford Reply Decl. ¶ 40.